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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARISSA HOECHSTETTER, JANE DOE #8,
JANE DOE #9, JANE DOE #10, JANE DOE #11
JANE DOE #12, JANE DOE #13, JANE DOE #14,
JANE DOE #15, JANE DOE #17, JANE DOE #18,
JANE DOE #19, JANE DOE #21, JANE DOE #22,
JANE DOE #23, JANE DOE #26, JANE DOE #27,
JANE DOE #28, AND JANE DOE #30,

ECF

CIVIL ACTION NO.:
19 CV _____

NOTICE OF REMOVAL

Plaintiffs,

-against-

COLUMBIA UNIVERSITY; THE NEW YORK AND
PRESBYTERIAN HOSPITAL; COLUMBIA PRESBYTERIAN
MEDICAL CENTER; COLUMBIA UNIVERSITY MEDICAL
CENTER; COLUMBIA-PRESBYTERIAN MEDICAL
CENTER, EAST SIDE ASSOCIATES; EAST SIDE
ASSOCIATES; ROBERT HADDEN; THE TRUSTEES OF
COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK;
COLUMBIA UNIVERSITY COLLEGE OF PHYSICIANS
AND SURGEONS; PRESBYTERIAN HOSPITAL
PHYSICIAN SERVICES ORGANIZATION, INC.;
COLUMBIA-CORNELL CARE, LLC; COLUMBIA
CORNELL NETWORK PHYSICIANS, INC.;
SLOANE HOSPITAL FOR WOMEN,

Defendant.

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**NOTICE OF REMOVAL BY DEFENDANTS
THE NEW YORK AND PRESBYTERIAN HOSPITAL AND TRUSTEES OF
COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK**

Pursuant to 28 U.S.C. §§ 1441 and 1446(b), Defendants THE NEW YORK
AND PRESBYTERIAN HOSPITAL s/h/a "COLUMBIA PRESBYTERIAN MEDICAL

CENTER,” “COLUMBIA UNIVERSITY MEDICAL CENTER,” “PRESBYTERIAN HOSPITAL PHYSICIAN SERVICES ORGANIZATION, INC.,” “COLUMBIA CORNELL NETWORK PHYSICIANS, INC.,” and “SLOANE HOSPITAL FOR WOMEN” (hereinafter “Hospital”) and THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK s/h/a “COLUMBIA UNIVERSITY,” “COLUMBIA UNIVERSITY COLLEGE OF PHYSICIANS AND SURGEONS,” “COLUMBIA-PRESBYTERIAN MEDICAL CENTER, EAST SIDE ASSOCIATES,” and “EAST SIDE ASSOCIATES” (hereinafter, “University”) hereby remove this civil action from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York. As set forth below, this action is removable pursuant to 28 U.S.C. § 1441(a) because the Amended Complaint raises claims under the laws of the United States which this Court has original jurisdiction under 28 U.S.C. § 1331. In addition, the Hospital and University defendants have satisfied all procedural requirements to effect removal of this action.

CIVIL COURT ACTION

1. Plaintiffs commenced this action against the defendants in Supreme Court, New York County. The action was assigned index number 161335/2018. See, Exhibit A NYSEF Document List 161335/2018.
2. On December 4, 2018, plaintiffs filed a Summons and Verified Complaint. A copy of the Summons and Complaint are attached hereto as Exhibit B pursuant to 28 U.S.C. § 1446 (a). See, Exhibit B Summons and Complaint.
3. On December 4, 2018, plaintiffs also filed a Proposed Order to Show Cause to use pseudonyms in the caption. Along with this proposed Order to Show Cause, they filed an attorney affirmation in support of the proposed order: “2016-02-22 Plea Agreement,”

2016-02-23 Criminal Court Transcript and “2016-03-29 Criminal Sentencing Transcript” and a Request for Judicial Intervention. See, Exhibit C annexed hereto, Proposed Order to Show Cause, Attorney Affirmation, Exhibits in Support of Motion and RJL.

4. The proposed Order to Show Cause and the RJL were returned by the Court for correction. These documents have not been re-filed. Exhibit A.

5. Plaintiffs never served the Summons and Complaint on defendants.

6. On March 27, 2019, plaintiffs filed an Amended Summons and Complaint. See, Exhibit D, Amended Summons and Complaint. On March 28, 2019, the Hospital and University defendants were served with the Amended Complaint.

7. The documents described above are the only documents that have been filed in this case at the time of this filing. Exhibit A.

8. In the Amended Complaint, plaintiffs allege they were sexually assaulted by Robert Hadden, M.D. between January 1993 and August 2012 while they were under his treatment for gynecologic and/or obstetric care. Exhibit D. Plaintiffs assert causes of action under Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681, violations of the Federal Civil Rights Act, Section 1983, Health Insurance Portability and Accountability Act (HIPAA) and the Clery Act 20 U.S.C. § 1092[f] (spelled in the Amended Complaint as “Cleary Act”). They also allege violations of their Constitutional Rights under the Fifth and Fourteenth Amendments.

9. The Supreme Court action is removable to this Court pursuant to 28 U.S.C. § 1441(a) because the Amended Complaint raises claims under the laws of the United States which this Court has original jurisdiction under 28 U.S.C. § 1331.

BASIS FOR REMOVAL

10. Plaintiffs are Marissa Hoechstetter and 18 other individuals who are identified in the pleading with pseudonyms Jane Doe #8 - Jane Doe #30. Exhibit D. The plaintiffs each allege that they were patients of Dr. Robert Hadden. They allege they were sexually assaulted by Dr. Hadden while receiving gynecologic and/or obstetric care. They allege that the assaults occurred sometime between 1993 and August 2012.

11. Robert Hadden is a co-defendant in this action. He was a licensed physician at all times alleged in the Amended Complaint. Robert Hadden was employed by the University defendant. He had privileges to treat patients at the Hospital defendant.

12. The Amended Complaint consists of eighteen causes of action. The first cause of action alleges a violation of Title IX the Education Amendments Act of 1972 (20 U.S.C. §1681), as well as violations of the Fifth and Fourteenth Amendments of the United States Constitution.

13. The fifth cause of action alleges a violation of the Clery Act (20 U.S.C. § 1092[f] and 34 C.F.R. 668.46), which mandates record-keeping of sexual abuse. The twelfth cause of action alleges a state claim of negligence *per se* in part based on alleged violations of the Clery Act.

14. The sixteenth cause of action is for invasion of privacy in part based on alleged violations of the Health Insurance Portability and Accountability Act (HIPAA).

15. In addition to the causes of action above, paragraph 494 of the Amended Complaint broadly alleges that the Hospital and University defendants violated their alleged “Duty to enact policies and procedures that are not in contravention of the Federal Civil Rights

Act, Section 1983, Title IX, and the 14th Amendment of the United States Constitution”.
Exhibit D at para 494.

16. The Amended Complaint includes causes of action that arise under state law, such as negligence, intentional infliction of emotional distress, and negligent hiring. The claims that arise under state law are based on the same factual allegations that give rise to the federal law claims. The Court is permitted to exercise supplemental jurisdiction over the state law claims pursuant to 28 U.S.C § 1441 (c).

17. This lawsuit could have been commenced in federal court on the basis of federal question. This Court has subject matter jurisdiction over the plaintiffs’ claims that arise out of federal law and/or the Constitution. Pursuant to 28 U.S.C §1331, plaintiffs’ Amended Complaint invokes federal question jurisdiction and this action should be removed.

TIMELINESS OF REMOVAL

18. Plaintiff commenced this action by the filing of a Summons and Complaint along with other documents on December 4, 2018. The Original Complaint was never served on the defendants. However, an Amended Complaint was served on the Hospital and University defendants on March 28, 2019.

19. Because this Notice of Removal is being filed within 30 days of service of the Summons and Amended Complaint, removal is timely under 28 U.S.C. § 1446(b).

PROCEDURAL REQUIREMENTS

20. This Notice is made on behalf of all the defendants with the exception of Robert Hadden. Written consent for removal has not been obtained from Robert Hadden as he has yet to appear in this action and upon information and belief he has not been served with

either the original Summons and Complaint or the Amended Complaint. It is anticipated that this co-defendant will provide his written consent based upon an assurance from his counsel.

21. Written notice of the filing of this Notice of Removal will be served on Plaintiffs' counsel and a copy of this Notice will be filed with the Clerk of the Supreme Court, New York County as required under 28 U.S.C. § 1446 (d). See Notice of Filing of Notice of Removal (without exhibits), annexed hereto as Exhibit B.

22. Pursuant to 28 U.S.C. § 1446(a), copies of all documents filed in the State Court Action are attached. Exhibits A, B, C & D.

23. The defendants have not yet answered or otherwise replied to the Summons and Amended Complaint and the time to respond has not yet expired.

24. By filing this Notice for Removal, defendants do not waive any defense or rights that may be available including without limitation the defenses of insufficiency of service of process.

25. If any question arises regarding the propriety of the removal of this action, defendants respectfully request the opportunity to present a brief and/or oral argument in support of their position that this case is removable.

WHEREFORE, defendants request that this action now pending the Supreme Court, New York County, be removed to the United States District Court for the Southern District of New York, wherein it shall proceed as an action originally commenced herein.

Dated: New York, New York
April 3, 2019

Respectfully Submitted,

HEIDELL, PITTONI, MURPHY & BACH, LLP

By: 

Denise A. Holzka (DH9998)

Attorneys for Defendants

THE NEW YORK AND

PRESBYTERIAN HOSPITAL s/h/a

“COLUMBIA PRESBYTERIAN

MEDICAL CENTER,” “COLUMBIA

UNIVERSITY MEDICAL CENTER,”

“PRESBYTERIAN HOSPITAL

PHYSICIAN SERVICES

ORGANIZATION, INC.,” “COLUMBIA

CORNELL NETWORK PHYSICIANS,

INC.,” and “SLOANE HOSPITAL FOR

WOMEN” and THE TRUSTEES OF

COLUMBIA UNIVERSITY IN THE

CITY OF NEW YORK s/h/a

“COLUMBIA UNIVERSITY,”

“COLUMBIA UNIVERSITY COLLEGE

OF PHYSICIANS AND SURGEONS,”

“COLUMBIA-PRESBYTERIAN

MEDICAL CENTER, EAST SIDE

ASSOCIATES,” and “EAST SIDE

ASSOCIATES”

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